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Visit to Saudi Arabia

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*

Summary

In his former capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson conducted an official visit to Saudi Arabia, from 30 April to 4 May 2017, to assess the progress that had been achieved by Saudi Arabia in its law, policies and practice in the fight against terrorism, measured against international human rights law and standards. The Special Rapporteur commends, in particular, the efforts of the Government to alleviate the suffering of the victims of terrorism through comprehensive programmes involving financial, psychological, educational and moral support, and career opportunities.

Despite some positive observations, in his report, the Special Rapporteur shares several key human rights concerns and recommendations with regard to existing abusive counter-terrorism and security-related legislation to stifle dissent, the overbroad definition of terrorism that often serves as a basis for prosecuting individuals engaged in non-violent expression and advocacy, especially in defence of human rights and journalists, as well as the pattern of systematic repression in the country's Eastern Province, where the majority of the Shia population resides.

Furthermore, the Special Rapporteur expresses his concerns about the large number of reports regarding unfair trials before the Specialized Criminal Court, prolonged periods of detention, the use of torture, coerced confessions and the lack of accountability, as well as the failure of Saudi Arabia to provide minimum procedural safeguards during detention and interrogation, and its judicial practice of admitting coerced confessions into evidence, which, in his view, amounts to a systematic and flagrant denial of justice.

With regard to the use of the death penalty following manifestly unfair trials, the Special Rapporteur stresses that its imposition — particularly in the barbaric and public

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way in which it is used in Saudi Arabia — is incompatible with the fundamental tenets of human rights law. He considers that the use of the death penalty by Saudi Arabia is archaic, and inhuman and degrading, not only for the person who is executed but for all those who contribute to it and who take part as spectators. It demeans and degrades the people of Saudi Arabia as a whole.

At the end of the report, the Special Rapporteur makes a number of recommendations to Saudi Arabia, including on its extraterritorial counter-terrorism engagements in Yemen and the Syrian Arab Republic.

Annex

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Saudi Arabia

I. Introduction

1. In his former capacity as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson conducted an official visit to Saudi Arabia, from 30 April to 4 May 2017, at the invitation of the Government, to assess the progress that had been achieved by Saudi Arabia in its law, policies and practice in the fight against terrorism, measured against international human rights law and standards.

2. The Special Rapporteur thanks the Government of Saudi Arabia for having extended an invitation to visit the country and he commends the transparency and the courteous, constructive and cooperative way in which the Government initiated and facilitated the visit, as well as his previous working-level visit in November 2016, both of which allowed a frank and open dialogue on most issues of concern. He also thanks the office of the United Nations country team in Saudi Arabia for providing valuable support throughout the visit.

3. The Special Rapporteur thanks the heads of all the governmental institutions that he met. He had the opportunity to hold exchanges of views about the Government's efforts to combat terrorism with the Minister of Justice, the President of the Bureau of Investigation and Public Prosecution, the General Director of the General Directorate of Investigation of the Ministry of the Interior, the President of the Specialized Criminal Court, the Chair of the National Society for Human Rights and the President of the Saudi Human Rights Commission.

4. The Special Rapporteur also had discussions with the Chief of the police station in Al Manar, and the Directors and personnel of Al Hair and Dhahban prisons and the Mohammed bin Naif Counselling and Care Centre. The Special Rapporteur's team conducted interviews with individuals accused and convicted of terrorist crimes and met, although not privately, with representatives of families of victims of terrorist violence.

5. The Special Rapporteur shared his preliminary findings with the Government at the end of his visit, on 4 May 2017.

II. Terrorist attacks against Saudi Arabia

6. The Special Rapporteur was informed by the Government that during the past three decades, Saudi Arabia had suffered a large number of terrorist attacks by Al-Qaida — and lately by Islamic State in Iraq and the Levant and other groups — against military and civilian targets. According to official records, altogether 1,075 terrorist plots have been identified in the country since 1987. The Special Rapporteur was informed that 844 of these had been effective, many with devastating consequences, and that 231 plots had been disrupted. A total of 3,178 individuals had been killed or injured as victims of terrorism over this period. The Special Rapporteur was not in a position to verify those figures. Since 2011, the Government has also been facing protests in the key strategic Eastern Province, which is home for the country's main oil production and in which the majority of the country's Shia population lives. Inspired by the Arab Spring, and facing ongoing repression, the Shia minority has started calling for reform.

III. Elements of the legal framework

A. International framework

7. Saudi Arabia is a party to some of the main international human rights conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of Racial Discrimination and the Convention on the Rights of the Child, as well as some optional protocols.[1] It is not party to either the International Covenant on Civil and Political Rights or to the International Covenant on Economic, Social and Cultural Rights. It is bound, however, by the relevant rules of international human rights law, which include the absolute prohibition of torture, the prohibition of the arbitrary deprivation of the right to life and of the prohibition of arbitrary deprivation of liberty, the fundamental principles of fair trial and due process, including the presumption of innocence and the principle of non-discrimination. These rights form part of customary international law. They are proclaimed in the Universal Declaration of Human Rights and are norms of *jus cogens* (peremptory norms of international law) from which no derogations are permissible.

8. Both international humanitarian law[2] and international human rights law apply to the recent extraterritorial operations of Saudi Arabia in the Syrian Arab Republic and Yemen. International humanitarian law does not replace international human rights law in situations of armed conflict. Both regimes remain in force and are complementary.[3]

B. National framework

9. Saudi Arabia is an Islamic State. It is a theocracy, whereby all source of authority derives from God. Its judicial system is based on Islamic law (sharia) for both criminal and civil cases. At the top of the legal system is the King, who acts as the final court of appeal and as a source of pardon. The court system consists of three divisions. The sharia courts hear most cases, in three jurisdictions: the Court of First Instance, the Court of Cassation and the Supreme Judicial Council. In addition to the regular sharia courts, the Board of Grievances hears cases that involve the Government. The court system is supplemented by various quasi-judicial committees within government ministries that address specific disputes, such as labour issues. In April 2005, a reorganization of the judicial system began, which was approved by royal order on 1 October 2007. Changes included the establishment of a new Supreme Court and special commercial, labour and administrative courts.

10. The Basic Law of Governance provides that "the Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is God's Almighty Book, the Holy Qur'an, and the Sunna of the Prophet".[4] Accordingly, the sharia provides the basis of governance and characterizes the State as well as its relationship with its citizens. While the Kingdom has ratified several core human rights treaties, is a current member of the Human Rights Council and has a substantial Human Rights Department within the Ministry of Islamic Affairs, it often puts forward the sharia, or divine law, its culture and the Islamic character of the State as impediments to full implementation of international human rights standards.

11. Government sources placed emphasis on the commitment of Saudi Arabia to international cooperation and mutual legal assistance in countering terrorism, and its efforts to stem the flow of terrorist financing. The extent to which such legislation is effectively implemented is open to question. The Special Rapporteur commends the efforts of the Government to alleviate the suffering of the victims of terrorism through comprehensive

[1] See A/HRC/WG.6/17/SAU/2.

[2] Saudi Arabia is a party to the Geneva Conventions relating to the protection of victims of international armed conflicts and Additional Protocols I and II.

[3] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226.

[4] Royal Decree No. A/90 of 1 March 1992.

programmes involving financial, psychological, educational and moral support, and career opportunities. Financial, housing and psychosocial support for the victims of terrorism and their families is an essential part of an integrated counter-terrorism strategy.[5]

12. The country's first piece of counter-terrorism legislation, the Penal Law for Crimes of Terrorism and its Financing, was approved by the King in December 2013 and entered into force on 1 February 2014.[6] Regulations of the Ministry of the Interior issued on 7 March 2014 extended the counter-terrorism law's definition of terrorism by adding to the list of acts classed as terrorism. On 31 October 2017, the Council of Ministers adopted the Law on Combating Crimes of Terrorism and its Financing, which replaced the 2014 framework. This new law transfers extensive powers from the Ministry of the Interior (which was reorganized in 2017) to the newly established Public Prosecution and the Presidency of State Security,[7] both of which report directly to the King.

13. The Specialized Criminal Court was created in the General Court in Riyadh, in 2008, to prosecute individuals accused of terrorism. Many were held in detention for alleged involvement in Al-Qaida attacks in the Kingdom, which began in 2003. By July 2007, about 9,000 suspects had been detained, according to official figures. Many went through the "de-radicalization" programme established in 2004.[8]

IV. Key human rights concerns

A. Definition of terrorism under counter-terrorism legislation

14. The Penal Law for Crimes of Terrorism and its Financing of 2014 included a very broad definition of terrorist crimes, which encompassed any act directly or indirectly intended to disturb the public order of the State, destabilize national security or the stability of the State, endanger national unity, suspend the Basic Law of Governance or some of its articles, undermine the reputation of the State or its standing, or cause damage to one of its public utilities or natural resources.[9] Anyone, whether Saudi Arabian or a foreign national, whether inside the country or abroad, who was accused of such conduct could be prosecuted as a "terrorist" inside Saudi Arabia. This included those who attempted to change the government system in the Kingdom or harmed its interests, economy or national or societal security.[10] Under such a broad definition, anyone challenging the authority or policies of the State could qualify as a terrorist.

15. The regulations of the Ministry of the Interior, issued on 7 March 2014, extended the counter-terrorism law's already overly broad definition of terrorism to include such acts as calling for atheist thought in any form, or calling into question the fundamentals of the Islamic religion on which the country is based.[11] The definition also included anyone who had contact or correspondence with any groups, currents of thought or individuals hostile to the Kingdom;[12] anyone seeking to shake the social fabric or national cohesion, or calling, participating, promoting or inciting sit-ins, protests, meetings or group statements in any form; and anyone who harmed the unity or stability of the Kingdom by any means.[13] The Ministry's guidance states that terrorism is committed by anyone attending conferences,

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[5] See A/HRC/20/14.

[6] Royal Decree No. M/16 of 27 December 2013.

[7] The Presidency of State Security was established by royal decree in July 2017 to coordinate all Saudi security institutions, including counterterrorism and domestic intelligence services, placing them under the direct authority of the King (who also acts as Prime Minister) and sidestepping the Ministry of the Interior. *Saudi Gazette*, "Saudi Arabia creates new security authority", 20 July 2017.

[8] Lori Plotkin Boghardt, "From ISIS to activists: new security trials in Saudi Arabia", Washington Institute for Near East Policy, *Research Notes*, No. 33, May 2016.

[9] Art. 1.

[10] Art. 3.

[11] Art. 1.

[12] Art. 6.

[13] Art. 8.

seminars, or meetings inside or outside the Kingdom targeting the security of society, or sowing discord in society,[14] as well as those inciting or making countries, committees, or international organizations antagonistic towards the Kingdom.[15]

16. The Committee against Torture has expressed concern that the 2014 Law criminalizes any peaceful expression of opinion or belief deemed to endanger national unity or undermine the reputation or position of the State.[16] The Working Group on Arbitrary Detention has referred to the grave and systematic violations of the norms related to the right to a fair trial, including the obligation of the Government to define criminal offences precisely within the law.[17]

17. The Special Rapporteur concurs with this assessment, and considers that the definition of terrorism in the Penal Law for Crimes of Terrorism and its Financing is objectionably broad and fails to comply with international human rights standards. The concept of terrorism should be confined to acts or threats of violence committed for political, ideological, religious or other motives, aimed at spreading fear among the population, or sections of it, in order to coerce a government or international organization to take or refrain from taking any action. Contrary to basic international human rights standards, articles 1 and 3 of the 2014 Law criminalize a wide spectrum of acts of peaceful expression, opinion, assembly and association, as well as freedom of thought and religion. This has a seriously restrictive impact on civil society as almost any non-governmental political action can be criminalized as an act of terrorism. The 2014 Law can also be used to request the extradition of peaceful political opponents and human rights defenders who have sought refuge abroad.

18. The Law of 31 October 2017 introduced a new article 30, which extended the definition of terrorism to those who described the King or Crown Prince in any way offensive to religion or justice.

19. As the definition of terrorism can include peaceful advocacy for political or policy reform, or criticism of the King, the expression of peaceful dissent can be prosecuted as terrorism under this provision. Intellectual and academic freedom is also ruthlessly suppressed. The misuse of academic or social status or media influence is listed as an aggravating factor for the purposes of sentencing and attracts a minimum of 15 years of imprisonment for the most trivial of infractions. Article 44 embodies a direct attack on freedom of expression. It provides that anyone who broadcasts or publishes by any means news, statements, false or malicious propaganda, or the like, for the purpose of carrying out a terrorist offence shall be punished by imprisonment for a term of between one and five years.

20. At the end of his country visit, the Special Rapporteur recommended that the Government must urgently review the definition of terrorism in the 2014 Law and bring it into line with international human rights norms, and to refrain from using antiterrorism and other forms of national security legislation to stifle peaceful political dissidence, criticism or non-violent protest. Far from bringing the definition into line with international standards, Saudi Arabia has enlarged the operation of the law to implement an even more repressive crackdown on the exercise of internationally protected civil and political rights. Saudi Arabia has similarly ignored the recommendation of the Committee against Torture to consider revising the definition of terrorism in the Penal Law for Crimes of Terrorism and its Financing so that its criminalization provisions are as narrow as possible and cannot serve as a basis for prosecuting individuals engaged in non-violent expression and advocacy, especially in defence of human rights.[18]

[14] Art. 9.
[15] Art. 11.
[16] CAT/C/SAU/CO/2, para. 16.
[17] A/HRC/WGAD/2015/38, para. 74.
[18] CAT/C/SAU/CO/2, para. 18.

B. Use of counter-terrorism and State security-related legislation to stifle dissent

21. Having received numerous reports about persecution of dissidents based on the 2014 Law, the Special Rapporteur notes with grave concern that the first individual convicted under the 2014 Law before the Specialized Criminal Court was Waleed bin Sami Abu al-Khair, a human rights lawyer and the head of an independent human rights organization founded in 2008 (Monitor of Human Rights in Saudi Arabia).[19]

22. Many prominent human rights defenders, religious figures, writers, journalists, academics and civic activists were the subjects of communications from the special procedure mandate holders.[20] These included the 11 founders of the Saudi Civil and Political Rights Association. In its responses, the Government stated that those persons were arrested and detained for offences related to terrorism and State security. The Government's classification of their alleged offences are indicative of the types of activity that are prosecuted as terrorism in Saudi Arabia. They included the "crimes" of misleading public opinion and tarnishing the country's reputation; defaming the loyalty and faith of the members of the Council of Senior Scholars; disparaging and insulting the judiciary; contesting the independence of the judiciary; disrespecting the legal profession; and disseminating statements and booklets containing false, uncorroborated and unauthenticated information with a view to damaging the reputation of the Kingdom. These offences are laid down in national legislation, including the Basic Law of Governance, the 2014 Law and the Law on Associations and Foundations (Royal Decree No. M/8 of 1 December 2015). In its responses, the Government insisted that those prosecutions were compatible with international norms and standards, in particular with articles 19, 20 and 29 (2) of the Universal Declaration of Human Rights. The Special Rapporteur cannot agree with that conclusion.

23. The Special Rapporteur underscores that, according to article 29 (2) of the Universal Declaration of Human Rights, no restrictions may be placed on the exercise of the rights and freedoms laid down in the Declaration other than those that are determined by law, and that are objectively necessary to guarantee the respect for the rights and freedoms of others and to meet just requirements of morality, public order and the general welfare in a pluralistic and democratic society. States have a positive obligation to foster and ensure the existence of an enabling environment[21] for citizens to exercise peacefully their rights to freedom of expression, assembly and association. Those with beliefs that are unpopular with the State, nonetheless, have the right to communicate information and opinions, and to participate and contribute to the building of a just society, freely and without fear.

24. Despite repeated requests by the Special Rapporteur, the Government did not give access to any of the individuals currently in detention for offences related to the exercise of the right to free speech. He provided the relevant authorities with a list of names of those he wished to interview confidentially. These included a number of individuals whose cases had been reviewed by the Working Group on Arbitrary Detention in 2015, which found their detentions to be in violation of international human rights law. They were Suleiman bin Ibrahim al-Rashudi, Abdullah bin Hamid al-Hamid, Mohammed bin Fahd al-Qahtani, Abdulkareem bin Yousef al-Khoder, Mohammed bin Saleh al-Bajadi, Omar bin Mohammed al-Said, Fadhel Maki al-Manasif and Raef Badawi. In each case, the Working Group found their deprivation of liberty to be arbitrary because it was based on the peaceful exercise of free speech and peaceful association.[22] The Special Rapporteur is profoundly concerned that this decision remains unimplemented more than two years later and

[19] See SAU 14/2014.

[20] See SAU 2/2011, SAU 3/2011, SAU 5/2011, SAU 2/2012, SAU 6/2012, SAU 7/2012, SAU 8/2012, SAU 9/2012, SAU 13/2012, SAU 5/2013, SAU 8/2013, SAU 1/2014, SAU 2/2014, SAU 5/2014, SAU 6/2014, SAU 11/2014, SAU 13/2014, SAU 14/2014, SAU 1/2015, SAU 3/2015, SAU 11/2015, SAU 4/2016, SAU 5/2016, SAU 1/2017, SAU 2/2017, SAU 8/2017 and SAU 12/2017.

[21] A/HRC/20/27, para. 63.

[22] A/HRC/WGAD/2015/38.

reiterates the demand of the international community that the Government release the individuals named in the decision.

25. The Special Rapporteur is further concerned at the pattern of systematic repression in the country's Eastern Province, where the majority of the Shia population resides. The Special Rapporteur received credible allegations that many individuals protesting against repression of the Shia had been detained. Their cases are currently making their way through the Specialized Criminal Court. Many of these individuals were reportedly peaceful protesters, simply asking for increased religious freedoms, equal rights for the Shia community and political reform. Some have been convicted for the expression of their political views, some for coordinating protests through social media and some even for providing first aid to protesters. In this process, a number of individuals who were under the age of criminal responsibility at the time they committed the alleged offences have now been sentenced to death. Others have already been executed.[23]

26. In one case, a Sunni man was convicted by the Specialized Criminal Court for having published an article criticizing prejudices by Sunni religious scholars towards members of the Shia branch of Islam and their beliefs. He was sentenced by the Specialized Criminal Court on 17 June 2013 on charges that included sowing discord, harming public order and the image of the State, questioning the integrity of State officials and defaming religious leaders. The Court banned him from writing in the press and on social media networks, and from appearing on television or radio. The appeal division of the Specialized Criminal Court upheld the sentence in June 2014.[24]

27. The Special Rapporteur notes that these arrests, detentions and convictions not only reveal serious flaws in the Saudi counter-terrorism acquis, but also send a message to citizens and human rights defenders that they will be prosecuted if they engage in these broadly defined activities.

28. The Special Rapporteur strongly condemns the use of counter-terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly.[25] As a matter of international law, the imperative of effective counter-terrorism cannot lawfully be misused as an excuse to quash public advocacy by peaceful critics, human rights activists and members of minority groups. Yet this is routine in Saudi Arabia today.

29. The Special Rapporteur reiterates his recommendation, first made to the Government at the conclusion of the country visit, that it must urgently establish an independent national security and due process review mechanism to re-examine all cases in which individuals are currently serving sentences of imprisonment based on acts that constitute the exercise of free speech, freedom of thought, conscience, religion or opinion, or freedom of peaceful assembly and association. The mechanism should have power to commute or pardon all such prisoners with immediate effect.

C. Unfair trials before the Specialized Criminal Court

30. Public information about cases before the Specialized Criminal Court is scarce. The Court was established in October 2008 to try detainees held in connection with terrorist offences. At that time, files relating to 991 detainees had been prepared and they were to stand trial on capital charges. In 2009, the Ministry of the Interior disclosed that the trials

[23] See SAU 9/2014, SAU 12/2014, SAU 6/2015, SAU 8/2015, SAU 2/2016, SAU 5/2016, SAU 7/2016 and SAU 7/2017.

[24] See SAU 11/2015.

[25] In its resolutions 25/18, 27/31, 32/31 and 34/5, the Human Rights Council noted its grave concern that "in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law".

had begun. Most cases dealt with by the Court are shrouded in secrecy.[26] Yet the Court appears to be very active: according to figures made available to the Special Rapporteur, by January 2016, the court had tried 2,225 cases involving 6,122 defendants. The Special Rapporteur was reliably informed that the Court had initially focused on allegations of political violence linked to Al-Qaida. However, this began to change in 2010 and for the past eight years the Court has been increasingly used for the prosecution of human rights and political activists. Far from a gradual modernization and improvement of the human rights situation that the Government is keen to portray internationally, the true picture seems to be that Saudi Arabia is backsliding into ever more severe political repression.

31. The secrecy of these trials raises serious concerns about their fairness. The Special Rapporteur received many reports about due process violations, including the lack of an effective habeas corpus guarantee; trials proceeding in secret; trials going ahead in the absence of defence lawyers; and trials in absentia with no effective defence. The Special Rapporteur received broadly consistent reports concerning the use of torture and the ill-treatment of detainees; arbitrary arrests and detention; violation of the right to independent legal counsel in detention (a key protection against abuse); the absence of genuinely independent medical examinations of suspects alleging torture; the practice of holding suspects incommunicado or in secret detention; the admission of evidence obtained under torture in breach of the obligations of Saudi Arabia under article 15 of the Convention against Torture; and executions following manifestly unfair trials.[27] The President of the Specialized Criminal Court assured the Special Rapporteur that all the rights guaranteed to an accused person were protected. The Special Rapporteur does not accept that to be the case.

I. Use of torture, coerced confessions and lack of accountability

32. During his visit, the Special Rapporteur was informed by the Government that there were legal safeguards in place to prevent torture under the Code of Criminal Procedure of 2013. The Government categorically denies that torture is ever committed on any detainee, and assured the Special Rapporteur that all detainees were afforded all their legal rights all of the time. That would be a surprising assertion for any State to make, but all the more so in the case of Saudi Arabia.

33. All prisons and places of detention in Saudi Arabia are under the supervision of the Bureau of Investigation and Public Prosecution (Department of the Attorney General). This institution is empowered to carry out inspections to monitor the conditions of detention of detainees and to ensure that the appropriate regulations are being applied. The Prosecutor's Office is charged with investigating allegations of torture. In accordance with paragraph 5 of the Medical Services Regulations, promulgated by ministerial decision No. 4093 (25 September 1978), all persons should undergo a medical examination at the time of their admission to prison, followed by periodic medical check-ups.

34. In addition, the Government pointed to the existence of prison and police monitoring mechanisms within the Saudi Human Rights Commission and the National Society for Human Rights. The representatives of both organizations informed the Special Rapporteur that they carried out unannounced visits to prisons and places of detention and evaluated complaints of ill-treatment. Both organizations have offices located within certain prisons.

35. However, the Special Rapporteur received well-documented reports of the use of torture and ill-treatment by law enforcement officials against individuals accused of having committed acts of terrorism, and the use of coerced confessions as the sole or decisive evidence in their convictions.[28] In a report published in June 2016, the Committee against Torture expressed its deep concern at the numerous reports brought to its attention that

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[26] See also Amnesty International, *Saudi Arabia: Assaulting Human Rights in the Name of Counter-Terrorism* (London, 2009), MDE23/009/2009.

[27] See SAU 5/2016.

[28] Ibid. See also A/HRC/WGAD/2015/38; Boghardt, "From ISIS to activists"; and Oliver Windridge, "Fatally flawed: an analysis of the judgment against a youth protester sentenced to death by Saudi Arabia's Specialized Criminal Court".

torture and other ill-treatment were commonly practised in prisons and detention centres in Saudi Arabia, in particular in branches of the General Directorate of Investigation of the Ministry of the Interior and in Al-Mabahith detention centres.[29] The methods used allegedly include electric shocks, sleep deprivation, incommunicado and prolonged solitary detention, and beatings to the head, face, jaw and feet.[30] He recalls that the particular severity of the crime of torture is reflected in the special position its prohibition takes in international law, as both a peremptory norm of customary international law (*jus cogens*) and one of the few absolute and non-derogable human rights.

36. The Committee against Torture noted its concern that, in Saudi Arabia, coerced confessions were admissible evidence in court in breach of article 5 of the Convention against Torture.[31] It condemned the absence of specific provisions to invalidate confessions obtained in violation of the Convention, including the reported failure to investigate allegations of coerced confessions. The Special Rapporteur recalls that the admissibility of coerced confessions in court provides an incentive to use torture. Article 15 removes this incentive and helps ensure the fairness of criminal proceedings and the reliability of verdicts.

37. The Special Rapporteur notes that allegations of torture or other forms of ill-treatment do not appear to be taken seriously by trial judges. Of particular concern is the fact that the Specialized Criminal Court has reportedly refused to launch investigations into allegations of torture.[32] In one case, the Court recorded the allegations of torture in its judgment, but declined a defence request to order an investigation or to produce the video recording of the accused's interrogation.[33] Between 2009 and 2015, more than 3,000 allegations of torture were formally recorded.[34] Despite this, the Special Rapporteur is not aware of a single official prosecuted for committing an act of torture or other ill-treatment. The theoretical protections enshrined in law appear illusory in practice.

38. The Special Rapporteur recalls that victims of torture and other ill-treatment must have a right to lodge a complaint of ill-treatment in custody.[35] The threshold for an admissible complaint must not deprive the procedure of its effectiveness.[36] Any allegation must be promptly followed by an impartial examination by a body that is independent of the alleged perpetrator. Whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, article 12 of the Convention against Torture imposes an obligation on the State to investigate.[37]

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[29] Article 2 of the Code of Criminal Procedure forbids causing bodily or moral harm to a person under arrest or subjecting him to torture or degrading treatment. Royal Decree No. 43 (16 June 1958) provides for a sentence of up to 10 years' imprisonment for an official who is proven to have engaged in abuse or coercion, such as torture or cruel treatment, while in office; this includes imposition of exemplary punishment. It further stipulates that anyone who has suffered harm shall have the right to appropriate compensation (CAT/C/SAU/Q/2/Add.2, para. 2).

[30] See SAU 1/2008, SAU 2/2008, SAU 9/2008, SAU 11/2008, SAU 1/2009, SAU 5/2009, SAU 6/2009, SAU 2/2011, SAU 3/2011, SAU 2/2012, SAU 3/2012, SAU 8/2012, SAU 10/2012, SAU 3/2013, SAU 7/2013, SAU 1/2014, SAU 5/2014, SAU 6/2014, SAU 10/2014, SAU 11/2014, SAU 1/2015, SAU 3/2015, SAU 5/2015, SAU 6/2015, SAU 8/2015, SAU 10/2015, SAU 11/2015, SAU 2/2016, SAU 5/2016, SAU 7/2016, SAU 1/2017, SAU 7/2017 and SAU 1/2018.

[31] CAT/C/SAU/CO/2, para. 23.

[32] Judges of the Court have repeatedly refused to act on claims made by defendants facing terrorism charges that they were subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession (CAT/C/SAU/CO/2, para. 17).

[33] See Windridge, "Fatally flawed".

[34] CAT/C/SAU/Q/2/Add.2, para. 70.

[35] See arts. 12 and 16 of the Convention against Torture and A/HRC/13/39/Add.5.

[36] Committee against Torture, *Parot v. Spain* (CAT/C/14/D/6/1990), para. 10.4; *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.6; *Abdelli v. Tunisia* (CAT/C/31/D/188/2001), para. 10.6; *Ltaief v. Tunisia* (CAT/C/31/D/189/2001), para. 10.6, and *Dimitrov v. Serbia and Montenegro* (CAT/C/34/D/171/2000), para. 7.2.

[37] CAT/C/SR.145, para. 10; CAT/C/SR.168, para. 40; CAT/C/FRA/CO/3, para. 20; and *Blanco Abad v. Spain*, para. 8.2.

39. Torture can be difficult to prove. The Special Rapporteur notes that Saudi counter-terrorism legislation allows for incommunicado detention for extended periods.[38] The General Assembly noted, in its resolution 70/146, that prolonged incommunicado detention or detention in secret places could facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and could in itself constitute a form of such treatment.[39] The Committee against Torture has frequently confirmed that incommunicado detention effectively deprives detainees of legal safeguards against torture.[40]

40. The Special Rapporteur received testimonies of individuals who had never seen a lawyer during the entire duration of their investigation. Others had met their lawyers very late in the process. Early access to a lawyer is critical in achieving basic levels of transparency. The practice in Saudi Arabia leaves detainees completely at the mercy of the detaining authority.[41] At the end of his country visit, the Special Rapporteur called upon the Government to introduce immediate reform to guarantee the automatic presence of lawyers after a suspect's detention and to abolish the existing practice whereby access to legal representation required the permission of the Bureau of Investigation and Public Prosecution.[42] Once again, Saudi Arabia not only ignored the Special Rapporteur's recommendation, but introduced new provisions in flagrant defiance of it. The 2017 Law, introduced following the country visit, provides that the Public Prosecutor now enjoys unconstrained discretion to forbid lawyers from communicating with their clients at any time during an investigation.[43]

41. The failure of Saudi Arabia to provide minimum procedural safeguards during detention and interrogation, and its judicial practice of admitting coerced confessions into evidence, strongly suggests that the practice is officially endorsed.[44] The situation in Saudi Arabia amounts to a systematic and flagrant denial of justice in this regard. International human rights obligations prohibit any State from extraditing suspects to face trial in Saudi Arabia in the absence of independently verifiable and solid guarantees against ill-treatment, and an enforceable undertaking not to use arguably coerced confessions as evidence. To meet international standards, such guarantees must be backed by effective independent monitoring.

2. Lengthy pretrial detention and flawed investigations

42. Individuals charged with terrorist offences in Saudi Arabia are subjected to exceptionally lengthy periods of pretrial detention.[45] Under the 2014 Law, individuals could be detained indefinitely by order of the Specialized Criminal Court. Under the 2017 Law, the Public Prosecution must now issue an arrest warrant within seven days of a suspect's arrest, a period which is seriously in excess of widely accepted international standards. The warrant does not need to provide details about the charges brought.[46]

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[38] See art. 6 of the 2014 Law and arts. 20–21 of the 2017 Law.

[39] Para. 13.

[40] CAT/C/SAU/CO/2, para. 16.

[41] A/HRC/13/39/Add.5.

[42] See art. 10 of the 2014 Law.

[43] Art. 21.

[44] See Committee against Torture, *Niyonzima v. Burundi* (CAT/C/53/D/514/2012). See also the African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, communication No. 334/2006, decision of 1 March 2011, para. 218: "once a victim raises doubt as to whether particular evidence has been procured by torture or ill-treatment, the evidence in question should not be admissible, unless the State is able to show that there is no risk of torture or ill-treatment. Moreover, where a confession is obtained in the absence of certain procedural guarantees against such abuse, for example during incommunicado detention, it should not be admitted as evidence".

[45] The Committee against Torture showed its concern, in 2016, that the State party's laws allow detained persons to be held without charge for up to six months and they do not require the authorities to promptly present persons deprived of their liberty to a judge who has the power to order their release nor do they guarantee the right of persons deprived of their liberty to have prompt access to independent medical assistance (CAT/C/SAU/CO/2, para. 14).

[46] Arts. 5 and 19.

43. The new counter-terrorism legislation confers on the Presidency of State Security the authority to conduct searches, investigations, seizures, and criminal and administrative prosecutions[47] without judicial oversight. The Presidency of State Security was established by royal decree in July 2017 purportedly in order to coordinate security institutions. The exercise of these powers is now under the direct authority of the King, thus sidestepping the Ministry of the Interior.[48] This reflects the increasing centralization of power in Saudi Arabia.

44. Individuals are legally compelled to provide information in counter-terrorism investigations. Such a legal obligation overrides essential privacy protections, such as legal professional privilege and journalistic privilege.

45. Article 15 of the 2017 Law provides broad powers for State authorities to use physical force on undefined grounds. It would seem to permit the use of force against individuals participating in peaceful gatherings. The use of force in such circumstances would be a violation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

46. Article 27 authorizes the Specialized Criminal Court to hear secret witnesses and expert testimonies without providing the defence with an opportunity to cross-examine in person or through counsel. This violates the fundamental rights of defence, and can only be consistent with the right to a fair trial if counterbalanced by effective safeguards. That is not the case in Saudi Arabia.

3. Lack of independence

47. The Committee against Torture had already found in 2016 that the Specialized Criminal Court was insufficiently independent of the Ministry of the Interior.[49] The new legislation strips away much of the investigatory powers of the Ministry of the Interior and places them directly under the authority of the Public Prosecution and the Presidency of State Security, both of which report directly to the King. Again, this is consistent with the increasing centralization of power in the monarchy and reflects a lack of confidence in independent civil institutions. Concerns regarding the lack of independence of the Specialized Criminal Court therefore remain undiminished.

4. Use of the death penalty following manifestly unfair trials

48. The Special Rapporteur expresses his grave concern about the lack of due process in terrorism cases generally. This concern is particularly acute in cases involving the imposition of the death penalty. In 2015, more than 158 people were reportedly executed, the highest number of executions recorded in Saudi Arabia since 1995.[50] In 2016, there were 154 executions. The mass execution of 47 individuals on one day (2 January 2016) provoked an international outcry.[51] These individuals were killed by public beheading and firing squad, following judicial proceedings that did not meet minimum international standards of due process. Among them were a number of people with psychosocial disabilities, and individuals who were under the age of 18 at the time the crimes were committed. Some had been convicted of non-violent political offences.[52] Especially provocative was the execution of prominent Shia cleric Sheikh Nimr al-Nimr, who had been convicted in connection with political activities.[53]

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[47] Art. 4 of the 2017 Law.

[48] *Saudi Gazette*, "Saudi Arabia creates new security authority", 20 July 2017.

[49] CAT/C/SAU/CO/2, para. 17.

[50] A/71/332, para. 23.

[51] Office of the High Commissioner for Human Rights (OHCHR), "Zeid deplores mass execution of 47 people in Saudi Arabia", 3 January 2016.

[52] See a joint press release issued by several Special Rapporteurs and the Committee on the Rights of the Child, "Saudi Arabia must immediately halt execution of children — UN rights experts urge", 22 September 2015.

[53] See SAU 9/2014, SAU 12/2014, SAU 6/2015, SAU 2/2016, SAU 5/2016 and SAU 7/2017.

49. On 1 June 2016, 24 individuals were put on trial in relation to the 2011 pro-democracy protests (the "Awamiyah cell"). The Specialized Criminal Court convicted and sentenced 14 of them to death. Reportedly, the trial failed to meet due process and fair trial standards, and the defendants were tortured and denied access to lawyers.[54] This case represents a significant cause for concern.

50. Since the Special Rapporteur's visit, several more individuals from the Shia minority have been sentenced to death and face imminent execution for their involvement in pro-democracy demonstrations in the east of the country in 2011 and 2012. The trials were described as manifestly unfair by civil society groups.[55] The Saudi Minister of Justice reportedly described the trials as "terrorist cases", which were "held in the presence of their relatives and representatives of the media and the Human Rights Commission".[56] The Special Rapporteur has considered in detail an independent record of one such prosecution in which there appeared to have been multiple violations of due process.[57]

51. The Special Rapporteur is dismayed that the 2017 Law provides for the death penalty for crimes that do not entail the loss of life.

52. In its resolution 71/187, the General Assembly called upon States to reduce the number of offences punishable by death. The Secretary-General has noted that the application of the death penalty for overly broad and vaguely defined terrorist offences remains a serious concern. To the same effect, in his statement to the sixth World Congress against the Death Penalty,[58] the High Commissioner for Human Rights stated that some States criminalized the legitimate exercise of fundamental freedoms with overly vague counter-terrorism legislation. As the High Commissioner pointed out, the threat or use of the death penalty in such cases was an egregious violation of human rights.[59] The Special Rapporteur considers that this is apt to describe the institutionalized use of the death penalty in Saudi Arabia.

53. The Special Rapporteur concurs with the Secretary-General in stating that, in the light of the evolution of international human rights law and jurisprudence and State practice, the imposition of the death penalty — particularly in the barbaric and public way in which it is used in Saudi Arabia — is incompatible with the fundamental tenets of human rights law.

54. The circumstances surrounding the execution of the death penalty can constitute cruel, inhuman or degrading treatment or punishment or even torture. The methods of execution employed in Saudi Arabia include beheadings (by a swordsman) followed by public crucifixion.[60] Stoning to death and execution by firing squad are also commonplace. Sometimes the individual's hands and legs may be amputated following their execution by beheading, and the families denied access to the deceased's body.[61] People are executed in this way not only for grave crimes of violence, but for the so-called crimes of adultery, apostasy, witchcraft and sorcery. The Special Rapporteur considers that the use by Saudi Arabia of the death penalty is archaic, and inhuman and degrading, not only for the person who is executed but for all those who contribute to it or take part as spectators. It demeans and degrades the people of Saudi Arabia as a whole.

55. The Government should urgently review all current cases in which prisoners accused and sentenced for crimes of terrorism are facing the death penalty in order to ensure that international minimum standards are met in each case. This means that the death sentence

[54] See SAU 5/2016 and SAU 7/2017.

[55] See SAU 7/2017. Also see Human Rights Watch, "Saudi Arabia: 3 alleged child offenders await execution: torture allegations ignored in unfair trial", 17 April 2016; Human Rights Watch, "Saudi Arabia: 14 Shia at risk of imminent execution: increase in executions since leadership change", 10 August 2017; and Reprieve, "14 Saudis facing imminent execution for protest offences", 14 July 2017.

[56] RT, "Saudi Justice Min. defends secret court's death sentences for 14 Shia protesters", 7 August 2017.

[57] See Windridge, "Fatally flawed".

[58] OHCHR, "World Congress against the Death Penalty".

[59] A/71/332, para. 33.

[60] See SAU 2/2016.

[61] See SAU 5/2015.

may be imposed only for the most serious crimes that result in the loss of life, and should never be imposed on individuals who were minors at the time the crimes were committed or on persons with psychosocial or intellectual disabilities. Only full respect for stringent due process guarantees distinguishes capital punishment, as permitted under international law, from a summary or arbitrary execution. If, contrary to international standards, Saudi Arabia remains wedded to the cult of execution, it must, as a minimum concession to human dignity, urgently search for more humane methods of killing people that do not glorify public mutilation and humiliation and lead to the degradation of all concerned.

D. Rehabilitation

56. The Special Rapporteur commends the efforts of the Government to counter the spread of violent extremism and its associated ideologies, not only with security measures but also with concerted action combining social, political and economic assistance and integration. He was particularly impressed by the conditions of detention in two of the five prisons that he visited, which were dedicated to holding those convicted or suspected of having committed terrorist offences. He visited Al Hair and Dhahban prisons, examined the facilities and spoke with both staff and inmates at both institutions. The standard of care, and the conditions of detention in these facilities, including medical, vocational training and recreational facilities, appeared above the norm. Generous provision is made for family and conjugal visits, and prisoners are encouraged to remain close to their families. Saudi Arabia can rightly be proud of the rehabilitative nature of the facilities in which it houses certain prisoners accused of terrorism.

57. The Special Rapporteur was impressed with the professional, evidence-based and imaginative rehabilitation and reintegration programmes designed in the Mohammed Bin Naif Counselling and Care Centre. This facility houses prisoners convicted of terrorism who are nearing the end of their sentences and provides them with a range of alternative life skills, from psychotherapy, to professional training and religious instruction, which are designed to offer a counter-narrative to radicalization. The centre claims an 86 per cent non-recidivism rate — an estimate that the Special Rapporteur was not in a position to verify. Its methodology deserves the attention of other States.

58. At the same time, the Special Rapporteur noted the absence of judicial involvement in placing individuals in these centres.[62] With the entry into force of the 2017 Law, the responsibility for the centres has been moved from the Ministry of the Interior to the Presidency of State Security. Individuals can be deprived of their liberty for long periods of time in what can only be described as administrative detention. The Special Rapporteur was informed that several peaceful dissidents had been transferred to such "de-radicalization" centres. The Special Rapporteur recalls that, in the absence of authorization by an independent judiciary, enrolment must be truly voluntary if it is to escape stigmatization as arbitrary detention.

E. Counter-terrorism operations in Yemen and the Syrian Arab Republic

59. In 2015, Saudi Arabia took the lead in a newly formed coalition of eight countries to mount a military operation in Yemen.[63] This operation is aimed at restoring the authority of the duly elected, internationally recognized Government of Yemen. The Government of Yemen was deposed in 2015 by opposition forces led by the armed Shia Houthi militia. The Special Rapporteur was informed by the Government of Saudi Arabia that it classified the Shia Houthi rebels in Yemen as State-sponsored terrorists, allegedly supported by the

[62] See art. 27 of the 2014 Law and art. 89 of the 2017 Law refer to persons detained for or convicted of any of the crimes provided for in the Laws.

[63] The coalition was initially made up of military forces from Bahrain, Egypt, Jordan, Kuwait, Morocco, the Sudan, Qatar and the United Arab Emirates, as well as Academi mercenaries from the United States of America. It has received logistical and intelligence support from France, the United Kingdom of Great Britain and Northern Ireland and the United States.

Islamic Republic of Iran, and that its operations were therefore, at least in part, counter-terrorism operations. Between March 2015, when the Office of the United Nations High Commissioner for Human Rights (OHCHR) began reporting on civilian casualties, and 30 August 2017, at least 5,144 civilians were killed and at least 8,749 injured. Children accounted for 1,184 of those who were killed and 1,592 of those injured. According to OHCHR, coalition airstrikes continued to be the leading cause of civilian casualties in the conflict and of child casualties. Some 3,233 of the civilians killed were reportedly killed by Saudi Arabia-led coalition forces.[64] In addition to markets, residential areas and public and private infrastructure, there were notable airstrikes in 2017 against funeral gatherings and small civilian boats.[65] Shortly after the Special Rapporteur's visit, on 25 August 2017, an airstrike took place on apartment buildings in the Yemeni capital, which allegedly killed at least 16 civilians and wounded a further 17.[66]

60. The Special Rapporteur recalls that all parties to the conflict in Yemen, including Saudi Arabia, are obliged to respect the applicable rules of international humanitarian law, including the principles of precaution, distinction and proportionality. Civilians and civilian objectives must be protected at all times. Hospitals, schools and religious sites are subject to heightened protection. Parties to the conflict must facilitate the rapid and unimpeded passage of humanitarian relief.[67] Directly targeting civilians and civilian objects, conducting disproportionate or indiscriminate attacks or failing to take all necessary precautions to avoid or minimize the impact on civilians constitute serious violations of international humanitarian law, and may amount to war crimes.[68]

61. The Special Rapporteur was informed by the Government that each airstrike was independently investigated and that the results, where appropriate, were made public. The Special Rapporteur is, nonetheless, extremely concerned that, despite the creation, in August 2016, of the Joint Incident Assessment Team (an investigative mechanism comprised of 14 individuals with military and legal experience from the coalition member States) very little information on civilian casualties has been officially released. In all but one of the cases examined by the Assessment Team, it found that the coalition was pursuing a legitimate military objective. OHCHR has expressed concern that the Assessment Team appeared to accept at face value the assertions that an intended target had been a legitimate military objective justifying the attacks that had resulted in civilian casualties and damage or the destruction of civilian objects. Despite the frequency and severity of civilian casualties and damage to civilian objects, no concrete action appears to have been taken to hold perpetrators accountable or to provide adequate reparations to the victims.[69]

62. The Special Rapporteur reminds Saudi Arabia that international human rights law and international humanitarian law impose an obligation on States to investigate alleged violations effectively, to ensure that perpetrators are brought to justice and to provide victims with full and effective reparation. Reparation implies not only that victims must receive adequate compensation, but also that they have the right to truth and to be afforded guarantees against non-repetition. Saudi Arabia is thus subject to an international legal obligation to ensure that a fact-finding investigation, independent of the chain of command involved in the strike, is conducted by the appropriate coalition party in any case in which there are reliable indications that civilians may have been killed or injured, and to make the results public. The Special Rapporteur calls for greater transparency regarding civilian casualties in Yemen, and calls upon the Government to ensure that such investigations are conducted, in each case, in a transparent and verifiable manner so that the true extent of civilian casualties can be made public.

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[64] OHCHR, "Yemen: an 'entirely man-made catastrophe' — UN human rights report urges international investigation", 5 September 2017.

[65] A/HRC/36/33, para. 28.

[66] Human Rights Watch, "Yemen: hiding behind coalition's unlawful attacks — lack of transparency underscores need for international inquiry", 8 September 2017.

[67] A/HRC/33/38, para. 10.

[68] A/HRC/36/33, para. 28.

[69] Ibid., para. 80.

63. Since his country visit, the Special Rapporteur has been informed of the devastating effects on the impoverished civilian population of the reported decision by Saudi Arabia to close airports and seaports in Yemen, setting up a de facto blockade. According to United Nations estimates, Yemen imports up to 90 per cent of its daily needs.[70] More than 7 million people are being kept alive by humanitarian aid. In a report to the Security Council in January 2018, the situation in Yemen was described as the world's largest catastrophe, with more than 22 million people requiring assistance, 8 million people at risk of famine, a cholera epidemic of more than a million cases and an outbreak of diphtheria, which is spreading. The spokesperson for the Office for the Coordination of Humanitarian Affairs has stated that Yemen is on the brink of a man-made famine, and its civilian population is being kept alive thanks to humanitarian operations. The spokesperson stressed that the lifeline has to be kept open and it is absolutely essential that the operations of the United Nations Humanitarian Air Service be allowed to continue unhindered.[71]

64. The Special Rapporteur welcomes the decision of 20 December 2017 by the coalition to facilitate some access to vital humanitarian assistance and encourages Saudi Arabia to ensure that such assistance is provided without impediment. Depriving the civilian population of vital assistance in the context of the armed conflict in Yemen would constitute a grave breach of humanitarian law. OHCHR has already expressed alarm at a series of recent attacks on civilians that have killed dozens of people, including several children. On 4 December 2017, the High Commissioner for Human Rights announced the establishment of the Group of Eminent International and Regional Experts on Yemen, as mandated by the Human Rights Council. The Group documents human rights violations by all parties to the conflict and works towards establishing accountability and ending impunity.

65. Turning to the engagement of Saudi Arabia in the conflict in the Syrian Arab Republic, the Special Rapporteur has received consistent and credible reports that several of the most violent extremist non-State armed groups have benefited from political, military, financial and logistical support from within Saudi Arabia. Both State and private actors have been implicated in these reports. This runs counter to the Government's expressed commitment to stem all terrorist financing and its stated policy to combat terrorism, both at home and outside its borders. These allegations, corroborated by a variety of credible public sources,[72] require investigation by the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011. This new Mechanism, established pursuant to General Assembly resolution 71/248, is responsible for investigating crimes committed by all sides in the conflict.

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[70] See https://unocha.exposure.co/eleven-facts-about-the-yemen-crisis.

[71] Casey Quackenbush, "Saudi Arabia won't let aid enter Yemen. That could cause 'catastrophic' famine", *Time*, 9 November 2017.

[72] See, among other public sources, Patrick Cockburn, "We finally know what Hillary Clinton knew all along — US allies Saudi Arabia and Qatar are funding ISIS", *Independent* (London), 14 October 2016; Gareth Porter, "How America armed terrorists in Syria", American Conservative, 22 June 2017; United States, Defence Intelligence Agency, classified memorandum dated 2012 (www.judicialwatch.org/wp-content/uploads/2015/05/Pg.-291-Pgs.-287-293-JW-v-DOD-and-State-14-812-DOD-Release-2015-04-10-final-version-1.pdf), revealed by WikiLeaks the contents of which were confirmed by a former director of the Agency, Michael Flynn, in an Al Jazeera interview dated 13 January 2016; WikiLeaks cable No. 09STATE131801_a, dated 30 December 2009 (https://wikileaks.org/plusd/cables/09STATE131801_a.html); and Vice-President Joe Biden's speech to Harvard students and his later apologies: Carol Giacomo, "Joe Biden apologizes for telling the truth", *New York Times*. See also the investigative report by Dilyana Gaytandzhieva, "350 diplomatic flights carry weapons for terrorists", *Trud*, 2 July 2017; followed up by Tyler Durden, "Journalist interrogated, fired for story linking CIA and Syria weapons flights", *Zero Hedge*, 28 August 2017; interview of the former Prime Minister of Qatar, Hamad Bin Jassim, on Qatari national TV, dated 25 October 2017 (www.youtube.com/watch?v=nOdwO4XCwHk); Editorial Board, "Fighting, while funding, extremists", *New York Times*, 19 June 2017; and Martin Williams, "FactCheck Q&A: is Saudi Arabia funding ISIS?", Channel 4, 7 June 2017.

V. Conclusions and recommendations

66. **There is no doubt that Saudi Arabia has suffered numerous terrorist acts on its soil in the past 30 years. It is also home to large numbers of foreign terrorist fighters returning from the conflicts in Iraq and the Syrian Arab Republic.[73] The Government rightly feels that it needs to protect its citizens and take meaningful and comprehensive measures to address the threat of terrorism.**

67. **Experience shows, however, that disproportionate or discriminatory counter-terrorism measures have a lasting adverse impact. Counter-terrorism measures that violate basic human rights have proven to be both ineffective and counterproductive. Counter-terrorism measures cannot be limited to the use of military force, law enforcement measures and intelligence operations alone.[74] Counter-terrorism measures can only be effective if they respect human rights.[75] It is essential that any measures taken by Saudi Arabia to combat terrorism and violent extremism (however defined) comply with all of the State's international legal obligations, including, in particular, international human rights law, refugee law and humanitarian law.[76]**

68. **As a key counter-terrorism partner at the international level, Saudi Arabia must show that it is serious about countering and preventing terrorism and violent extremism that can lead to terrorism. Yet it is clear that counter-terrorism measures have been misused to stifle political dissent, suppress opposition and silence calls for reform by peaceful critics.**

69. **Those who peacefully exercise their right to freedom of expression are systematically persecuted in Saudi Arabia. Many languish in prison for years. Others have been executed after blatant miscarriages of justice. A culture of impunity prevails for public officials who are guilty of acts of torture and other ill-treatment. Peaceful avenues for redress of grievances are foreclosed by the use of repressive measures to silence civil society. There is an almost complete lack of transparency concerning prosecutions for terrorist acts and a corresponding accountability gap regarding extraterritorial counter-terrorism operations. Rather than address these issues, which the Special Rapporteur raised with the Government at the end of his country visit, Saudi Arabia has instead adopted ever more draconian counter-terrorism legislation. These are not the actions of an administration that is confident and secure. Rather, the increasing centralism that is evident in all areas betokens a level of insecurity about the present administration's position at home and in the world. While the Government treated the Special Rapporteur with professional courtesy during his visit, officials prevented him from speaking to the prisoners he wished to interview in private, taking him instead to carefully selected showcase facilities. Rather than engaging positively and constructively with the issues, the Government has resorted to blanket denials, bland reassurances and invocations of its own interpretation of sharia law to justify its actions. If it is to play any effective role in combating international terrorism, Saudi Arabia must urgently change course.**

70. **When Saudi Arabia presented its candidature for membership of the Human Rights Council, it pledged to commit itself to the highest standards of human rights protection. The picture that emerges from this report casts doubt upon whether it was wise for Saudi Arabia to be admitted to the Council, and threatens to undermine the authority of the Council itself in the eyes of the world. The Special Rapporteur**

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[73] According to the latest figures, 3,244 Saudi nationals have gone to the Syrian Arab Republic or Iraq, while 7,523 have been stop-listed in Turkey. Richard Barrett, "Beyond the Caliphate: foreign fighters and the threat of returnees" (Soufan Centre, October 2017).

[74] Security Council resolution 2178 (2014).

[75] Global Counter-Terrorism Strategy, General Assembly resolution 60/288.

[76] Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.

accordingly calls upon Saudi Arabia to demonstrate, through concrete measures, that it genuinely intends in the future to uphold the highest standards in the promotion and protection of human rights,[77] and to comply with the commitments it made in March 2016 when putting itself forward as a candidate to the Human Rights Council.[78]

71. **The Special Rapporteur recommends that:**

(a) **The Government must urgently review the definition of terrorism in the 2017 Law and bring it into line with international human rights norms. In particular, it must ensure that its provisions are defined with precision and cannot serve as a basis for prosecuting individuals engaged in non-violent expression and political advocacy. Saudi Arabia must refrain from using antiterrorism and national security legislation to stifle peaceful political dissidents and critics of the actions of the State, the current regime and the Royal Family;**

(b) **Saudi Arabia should urgently establish an independent national security and due process review mechanism to carry out a thorough independent review of all cases involving crimes allegedly committed in speech or writing. The mechanism should first seek to identify all individuals that are currently serving sentences of imprisonment for acts that objectively constitute the exercise of their right to free speech, freedom of thought, conscience, religion or opinion, or the right to freedom of peaceful assembly and association. The mechanism should have the power to commute or pardon all such prisoners with immediate effect and should proceed to do so. The composition of the mechanism should include one member of the senior judiciary, together with a majority of independent legal academics, lawyers in independent practice and representatives of civil society;**

(c) **Saudi Arabia is obliged to investigate, promptly and ex officio, all allegations of torture and ill-treatment and other serious human rights violations committed under its counter-terrorism and national security framework. It must establish an independent effective and accessible avenue by which victims can lodge complaints about torture and ill-treatment in all places of detention. Genuinely independent investigations must be established whenever there are reasonable grounds to suspect ill-treatment. The Government must ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment receive adequate compensation. As part of this obligation, the relevant authorities are under an obligation to ensure the availability of independent consensual medical examinations at the time of arrest and at regular intervals thereafter;**

(d) **Given the prevalence of torture allegations in terrorism cases, the Government must ensure that coerced confessions are always inadmissible in law and in practice, except when invoked as evidence against a person accused of torture. Improved judicial training should be introduced to ensure that all judges are made aware of their obligation to take any allegation of torture seriously and to investigate it thoroughly;**

(e) **Measures should be taken to strengthen the independence of the Specialized Criminal Court and to ensure increased transparency in its proceedings;**

(f) **All individuals charged under the counter-terrorism legislation must be afforded a genuinely fair trial that respects the international guarantees of due process. The 2017 Law should be amended to provide effective protection of the right to access counsel, the right to judicial oversight of detention and the right to limits on the length of pretrial detention;**

(g) **Saudi Arabia is legally obliged to implement in full the specific and detailed recommendations of the Committee against Torture and the decisions of the Working Group on Arbitrary Detention;**

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[77] General Assembly resolution 60/251, paras. 8–9.

[78] A/71/72.

(h) **In the light of his findings, the Special Rapporteur recommends that Saudi Arabia should extend invitations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association to conduct country visits to further investigate the issues identified in this report;**

(i) **Saudi Arabia should sign and ratify the International Covenant on Civil and Political Rights and its first Optional Protocol, as well as the Optional Protocol to the Convention against Torture and enable the Subcommittee on Prevention of Torture to carry out regular unannounced inspections of all places of detention;**

(j) **The Government should introduce compulsory training programmes for law enforcement officials, investigators, prosecutors, judges and medical personnel on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

(k) **Saudi Arabia should immediately establish a moratorium on the use of the death penalty, with a view to becoming a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;**

(l) **The Government should introduce legislation to ensure that in all cases in which a counter-radicalization rehabilitation programme leads to a deprivation of liberty, it is authorized and supervised by an independent and impartial judicial authority;**

(m) **In its extraterritorial counter-terrorism operations in Yemen and the Syrian Arab Republic, Saudi Arabia must ensure that a fact-finding investigation, independent of the chain of command involved in airstrikes, is conducted in any case in which there are reliable indications that civilians may have been killed or injured. The Special Rapporteur calls for greater transparency, and calls upon the Government to ensure that such investigations are conducted in every such case and the true number of civilian casualties, including those killed, is made public;**

(n) **The Special Rapporteur calls on the Government to pursue its efforts to investigate allegations concerning the provision of material support from sources within Saudi Arabia for violent extremist armed opposition groups in the Syrian Arab Republic. The Government should fully cooperate with the two United Nations mechanisms with a mandate to document violations of human rights and humanitarian law by all parties to the conflict in the Syrian Arab Republic, to redouble its efforts to prevent effectively the supply of weapons to armed groups in the conflict and to engage actively in efforts to seek a peaceful political settlement to it.**